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Supreme Court, U.S.
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No. 02- 02-65

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IN THE

Supreme Court of the United States

GREEN SPRING HEALTH SERVICES, INC., *et al.*,
Petitioners,

v.

PENNSYLVANIA PSYCHIATRIC SOCIETY,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Third Circuit correctly held—in conflict with this Court's precedents—that an association has standing to bring suit not on behalf of itself, and not on behalf of its members, but on behalf of its members' patients, where the association itself has suffered no independent injury-in-fact and lacks any affiliation with the patients on whose behalf it purports to sue?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioners Green Spring Health Services, Inc. ("Green Spring"), Magellan Health Services, Inc. ("Magellan"), Highmark, Inc. ("Highmark"), Keystone Health Plan West, Inc. ("Keystone West"), Keystone Health Plan Central, Inc. ("Keystone Central"), and Keystone Health Plan East, Inc. ("Keystone East") were the defendants and appellees below.

Pursuant to S. Ct. Rule 29.6, petitioners state that Magellan is the corporate parent of Green Spring; that Highmark is the corporate parent of Keystone West; that Highmark and Capital Blue Cross are the corporate parents of Keystone Central; and that Independence Blue Cross, AmeriHealth, Inc., AmeriHealth Integrated Benefits, Inc., and AmeriHealth HMO, Inc. are the corporate parents of Keystone East. No publicly held company owns 10% or more of petitioners' stock.

Respondent Pennsylvania Psychiatric Society is a nonprofit organization and was the plaintiff and appellant below.

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PETITION FOR A WRIT OF CERTIORARI

Green Spring Health Services, Inc., *et al.*, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the Third Circuit reversing the District Court's dismissal is reported at 280 F.3d 278 and reprinted in the appendix hereto ("App.") at 1a. The opinion of the District Court adopting the Magistrate Judge's report and recommendation and granting petitioners' motions to dismiss is not reported and is reprinted at App. 28a. The Magistrate Judge's report and recommendation is not reported and is reprinted at App. 30a.

JURISDICTION

The judgment of the Court of Appeals was entered on February 6, 2002. App. 1a. A timely petition for rehearing and rehearing en banc was denied on March 11, 2002. App. 44a. On June 4, 2002, Justice Souter extended the time within which to file a petition for certiorari to and including July 10, 2002. App. 46a. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

Article III, section 2 of the United States Constitution provides, in pertinent part: "The judicial Power shall extend to all Cases, in Law and Equity, arising under * * * the Laws of the United States * * *."

INTRODUCTION

This case concerns an important aspect of Article III's "Case" or "Controversy" requirement and the standing doctrine implementing that constitutional limitation. This Court has consistently held that, with rare exception, litigants bringing suit in federal court must themselves have suffered some injury-in-fact and raise claims in which they themselves have a personal stake, not those based on "another person's legal rights." *Allen* v. *Wright*, 468 U.S. 737, 751 (1984). Two limited exceptions exist: one permits an association that has not itself suffered injury to bring suit on behalf of its members if the members would otherwise have standing to do so "in their own right," *Hunt* v. *Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977), while the other permits litigation on behalf of third parties so long as the litigant himself has otherwise suffered a sufficient injury-in-fact and shares some close relationship with the party on whose behalf he purports to sue.

The question presented in this case is whether these two limited exceptions can be "stacked" or "piggy-backed" one on top of the other to create yet another, more attenuated

exception. A divided panel of the Third Circuit ruled that an association that has not suffered injury to itself may nevertheless bring suit not on behalf of its members, but on behalf of its *members' patients*—individuals with whom the association shares no affiliation whatsoever. The court below reasoned that, so long as the association would have associational standing to press its members' claims—the first exception to traditional standing principles—and so long as the members would have third-party standing to raise claims on their patients' behalf—the second exception—then the association could also advance the rights of its members' patients.

That ruling directly conflicts with the precedents of this Court. As Judge Nygaard pointed out in dissent, an association "cannot piggy-back two discrete *exceptions*, to swallow up the long-standing *rule* that litigants must assert their own rights and interests." App. 24a (emphases in original). The novel doctrine of "derivative standing" announced by the court below fits into none of the limited exceptions this Court has established. It does not come within the rubric of associational standing, since that exception requires that the association raise claims that its members could litigate "in their own right." Nor is the rule faithful to the third-party standing exception, since it empowers an organization to litigate on behalf of distant third parties without having suffered any injury itself. Moreover, the expansive exception endorsed by the Third Circuit threatens fundamental separation-of-powers concerns that the standing doctrine carefully guards. As this case underscores, an organization with no personal stake in the litigation has been able to seek "broad-based changes" to the managed-care industry in the name of third parties with whom it shares no relationship. Liberalizing the rules of standing to such a degree will invariably make the judiciary, rather than the legislature, the principal forum for resolving weighty and often abstract social-policy

issues. This Court should grant certiorari to resolve the multiple conflicts on the important question presented.

STATEMENT OF THE CASE

Green Spring administers behavioral health and substance abuse services for many Pennsylvania residents enrolled in managed care plans. By entering into individual Provider Participation Agreements ("Provider Agreements") with psychiatrists throughout the State, Green Spring establishes a network of participating psychiatrists. It then enters into agreements ("Service Agreements") with various employers and health maintenance organizations—among them Keystone West, Keystone Central, and Keystone East (collectively, "the HMOs")—that wish to incorporate the Green Spring network into their benefit plans. The combined effect of the Provider Agreements and the Service Agreements is to establish a system through which the participating psychiatrists render behavioral health and substance abuse services to individuals enrolled in benefit plans administered by the HMOs that have contracted with Green Spring.

Respondent Pennsylvania Psychiatric Society ("PPS") is a nonprofit organization of psychiatrists practicing in Pennsylvania. Although many of its member-psychiatrists have signed Provider Agreements with Green Spring, PPS itself has no relationship—contractual or otherwise—with Green Spring or its corporate parent, Magellan. Nor for that matter does PPS share any connection with its members' patients; it is purely a professional association open only to psychiatrists licensed in Pennsylvania and devoted exclusively to advancing their particular interests.

Seeking to reform managed-care practices through litigation, PPS brought suit against Green Spring, Magellan, Highmark,[1] and the HMOs (collectively, the "managed care

[1] Highmark provides managed-care programs in conjunction with its subsidiary, Keystone West.

organizations" or "MCOs"), alleging a variety of state-law claims sounding in tort and contract.[2] Among its allegations, PPS maintained that the MCOs failed to authorize medically necessary mental health and substance abuse services; interfered with patients' care by delegating psychiatric treatment decisions to non-psychiatrists; referred patients to treatment locations PPS deemed inconvenient; and generally suppressed utilization and hindered the ability of PPS members to practice psychiatry.

Despite its broad-based attack on the way in which MCOs deliver psychiatric care, PPS did not allege that it had been harmed itself in any way by the practices identified in the complaint. Rather, PPS purported to raise claims on behalf of two distinct groups: its member-psychiatrists and the patients of those member-psychiatrists. None of the patients are members or otherwise affiliated with PPS. On behalf of both groups, PPS sought damages as well as declaratory and injunctive relief.

The MCOs moved to dismiss, arguing that PPS lacked standing to press the claims of both its member-psychiatrists and their patients. As for the members' claims, the MCOs contended that associational standing was inappropriate because PPS's claims would improperly "require[] the participation of individual members in the lawsuit." *Hunt* v. *Washington State Apple Adver. Comm'n*, 432 U.S. at 343.

Even clearer, the MCOs argued, was PPS's inability to litigate on behalf of non-member patients. For an entity to

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[2] The action was initially filed in the Court of Common Pleas of Allegheny County, Pennsylvania, but was later removed to the United States District Court for the Western District of Pennsylvania because the claims are preempted by the civil enforcement provision of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(1)(B). *See Metropolitan Life Ins. Co.* v. *Taylor*, 481 U.S. 58, 66 (1987); *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U.S. 41, 51-52 (1987).

gain "standing to advance the * * * rights of others," this Court has always required that it have independently "suffered some injury-in-fact, adequate to satisfy Article III's case-or-controversy requirement." *Caplin & Drysdale, Chtd. v. United States*, 491 U.S. 617, 623 n.3 (1989). Because PPS conceded that it was in no way injured by the practices it assailed in its complaint, the MCOs argued that PPS's attempt to bring suit on behalf of its members' patients necessarily failed.

The District Court agreed and dismissed the case for lack of standing.[3] App. 28a-29a. Notwithstanding the fact that PPS sought what it termed "broad-based changes" to the MCOs' practices, the court found that "to prove such 'broad based' changes are warranted, PPS will have to establish that the alleged abuses occurred," which "will necessarily entail the involvement in this litigation of [individual] PPS members." *Id.* 36a. The court therefore found PPS lacked associational standing to advance its members' claims.

Turning to PPS's claims brought on behalf of its members' patients, the court found dispositive the fact that "PPS does not allege that it has itself suffered concrete injury." *Id.* 37a. As the court recognized, injury-in-fact is an essential "preliminary requirement for third party standing." *Id.* Because PPS, by its own admission, does not meet that threshold requirement, "the claims made on behalf of the patient-subscribers must be dismissed." *Id.* Moreover, even putting that jurisdictional omission aside, the court held third-party standing was improper for prudential reasons. Noting that third-party standing is proper only where the litigant and the third-party share a close relationship, the District Court held that "the 'relationship' between PPS and the patient-

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[3] The District Court referred the matter to a magistrate judge, who issued a detailed report recommending that the case be dismissed for lack of standing. App. 30a. The District Court adopted the magistrate judge's recommendation in full. App. 28a.

subscribers is so attenuated as to weigh against permitting PPS to bring suit on behalf of persons with which it has no direct relationship." *Id.* 38a.

PPS appealed and a divided panel of the Third Circuit reversed. Because PPS abandoned its prayer for damages on appeal—thus limiting the suit to one for declaratory and injunctive relief—the majority found the risk that individual members would need to participate in the lawsuit sufficiently mitigated. *Id.* 7a. It accordingly ruled that PPS had alleged facts that, if proven true, would establish associational standing for its members' claims. *Id.* 7a-11a.

As for PPS's ability to advocate on behalf of its members' patients, the panel began its analysis by properly recognizing that, absent narrow exceptions, a " 'litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties.' " *Id.* 13a (quoting *Powers* v. *Ohio*, 499 U.S. 400, 410 (1991)). The panel also recognized that "the Pennsylvania Psychiatric Society itself has not suffered direct injury." *Id.* 15a.

The majority nevertheless went on to rule that PPS had third-party standing to represent the interests of its members' patients. Notwithstanding this Court's decisions to the contrary, the majority ruled that PPS itself need not have suffered injury-in-fact to raise the claims of third parties. The court below justified its rule by employing a novel syllogism of its own design: (1) PPS's member-psychiatrists would presumably have third-party standing to represent their patients; (2) PPS has associational standing to represent its members; therefore (3) PPS has third-party standing to assert the claims of the patients that its members would have third-party standing to assert. *Id.* 15a. The upshot of the panel's "derivative standing" doctrine was to establish a rule that: "So long as the association's members have or will suffer sufficient injury to merit standing and their members possess standing to represent the interests of third-parties, then

associations can advance the third-party claims of their members without suffering injuries themselves." *Id.* 21a. Thus, even though the panel recognized that "the Society does not itself stand in an appropriate relationship to the patients' claims to directly assert them," it thought that fact irrelevant, since PPS's "members may have third-party standing to do so." *Id.* 15a.

The panel again employed this transitive analysis in evaluating whether PPS shared a sufficiently close relationship with the patients on whose behalf it purported to litigate. Rather than focus on the actual relationship between the litigant—here, PPS—and the third-party—the patients—as this Court's precedents dictate, the court below examined the relationship between the *member-psychiatrists*—who are not parties to the lawsuit—and their patients. The panel thought this method of analysis proper because, given the fact that PPS "seeks to establish standing on the basis of its members' standing to bring these claims, *the members are the appropriate focus of inquiry for these purposes*." *Id.* 15a (emphasis added).

Judge Nygaard dissented. He found no authority for the majority's "hybrid-type of third-party derivative standing." *Id.* 24a. Although he agreed that PPS has associational standing to raise its members' claims, and that the individual psychiatrists would presumably have third-party standing to assert their patients' claims, he emphasized that "PPS cannot piggy-back two discrete *exceptions*, to swallow up the long-standing *rule* that litigants must assert their own rights and interests." *Id.* (emphases in original). Underscoring the unprecedented nature of the majority's new rule, Judge Nygaard concluded: "I cannot find, nor does PPS cite, any authority for stacking or piggy-backing these relationships into an attenuated concatenation of exceptions to the standing rule so as to confer standing on PPS." *Id.*

Rather than invent a new hybrid rule for evaluating the ability of an association to press the claims of its members' patients, Judge Nygaard would have applied the "basic test for third-party standing" that the Third Circuit had fashioned from this Court's precedents. *Id.* 24a-25a. At its core, that test requires that "the party seeking standing has suffered an injury in fact." *Id.* 24a. Because "[n]o one disputes th[e] fact" that "PPS did not itself suffer an injury," Judge Nygaard found that PPS "cannot satisfy [the] most elementary standard" for evaluating third-party standing claims. *Id.* 25a. On that basis alone, Judge Nygaard would have denied PPS third-party standing. And in any event, Judge Nygaard agreed with the District Court that prudential considerations militated against PPS's third-party standing claims, given "the remoteness of the relationship between PPS and its members' patients." *Id.* 25a. *See id.* ("The relationship between PPS and the patients is nothing like the doctor/patient intimacy that supports that exception.").

The MCOs filed a timely petition for rehearing and rehearing en banc, which was denied on March 11, 2002. App. 44a.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENTS LIMITING THIRD-PARTY STANDING.

Two fundamental rules—one constitutional, the other prudential—guide this Court's standing jurisprudence. The first provides that a litigant "must allege personal injury," while the second establishes a "general prohibition on a litigant's raising another person's legal rights." *Allen* v. *Wright*, 468 U.S. at 751. From these bedrock principles, this Court has carved but two discrete exceptions. *First*, when "bring[ing] suit on behalf of its members," an association need not allege injury to itself, so long as "its members would otherwise have standing to sue in their own right."

Hunt v. *Washington State Apple Adver. Comm'n*, 432 U.S. at 343. *See, e.g.*, *Warth* v. *Seldin*, 422 U.S. 490, 511 (1975). *Second*, the normal injunction against raising the rights of parties absent from the litigation may be lifted if, but only if, the litigant himself has otherwise suffered a personal "injury in fact" and the litigant has a "close relation" to the party whose rights are asserted. *Powers* v. *Ohio*, 499 U.S. at 411. *See, e.g.*, *Miller* v. *Albright*, 523 U.S. 420, 445-447 (1998) (O'Connor, J., concurring in the judgment); *Caplin & Drysdale, Chtd.* v. *United States*, 491 U.S. at 623-624 n.3.

The Court of Appeals' decision in this case represents a startling departure from these precedents. The holding below that an association may bring suit not on behalf of its members but on behalf of its *members' patients*, when the association itself has suffered no independent injury and shares no close relationship with the patients it seeks to represent, improperly conflates the two distinct exceptions discussed above. Such a rule does not fit within the exception for associational standing, since the claims the association raises belong to its members' patients, not the members themselves. Nor does it come within the exception for third-party representation, since the association has suffered no injury to itself and boasts no relationship whatsoever with the group on whose behalf it purports to sue. *See* App. 24a (Nygaard, J., dissenting) ("PPS cannot piggy-back two discrete *exceptions*, to swallow up the long-standing *rule* that litigants must assert their own rights and interests.") (emphases in original). The petition should be granted to resolve the fundamental conflict between the decision below and those of this Court. *See* S. Ct. Rule 10(c) (one of the principal considerations governing the exercise of certiorari jurisdiction is whether a court of appeals "has decided an important question in a way that conflicts with relevant decisions of this Court").

1. Article III of the Constitution limits the jurisdiction of the federal courts to deciding "Cases" or "Controversies," and "[s]tanding to sue * * * is an aspect of the case or

controversy requirement." *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 64 (1997). Whether in their own right or on behalf of others, all litigants seeking redress from the federal judiciary must therefore satisfy this "irreducible constitutional minimum." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). To do so requires first and foremost that the litigant "demonstrate that he has suffered 'injury in fact.' " *Bennett* v. *Spear*, 520 U.S. 154, 162 (1997) (quoting *Defenders of Wildlife*, 504 U.S. at 560).[4] For this Court has long held that "Article III judicial power exists only to redress or otherwise to protect against injury to the complaining party." *Warth* v. *Seldin*, 422 U.S. at 499. *See Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 473 (1982) ("The exercise of judicial power, which can so profoundly affect the lives, liberty, and property of those to whom it extends, is therefore restricted to litigants who can show 'injury in fact' resulting from the action which they seek to have the court adjudicate.").

Being constitutional in nature and therefore "immutable," *Bennett* v. *Spear*, 520 U.S. at 162, the injury-in-fact requirement necessarily applies even to litigants who raise only claims of third parties. Indeed, this Court has squarely held that third-party standing implicates *both* constitutional and prudential considerations: "When a person or entity seeks standing to advance the constitutional rights of others, we ask two questions: first, has the litigant suffered some injury-in-fact, adequate to satisfy Article III's case-or-controversy requirement." *Caplin & Drysdale, Chtd.* v. *United States*, 491 U.S. at 623-624 n.3. *See Powers* v. *Ohio*, 499 U.S. at

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[4] Article III standing also requires a litigant to prove not only "injury in fact," but also that "the injury is fairly traceable to the actions of the defendant and that the injury will likely be redressed by a favorable decision." *Bennett* v. *Spear*, 520 U.S. at 162 (internal quotations omitted). *Accord Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 102-103 (1998).

411 ("The litigant must have suffered an 'injury in fact,' thus giving him or her a sufficiently concrete interest in the outcome of the issue in dispute.") (internal quotation omitted). Only if the litigant can satisfy this constitutional standard by "show[ing] that he *personally* has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant," *Gladstone Realtors* v. *Village of Bellwood*, 441 U.S. 91, 99 (1979) (emphasis added), does this Court proceed to ask the second question: "do prudential considerations which we have identified in our prior cases point to permitting the litigant to advance the claim?" *Caplin & Drysdale, Chtd.* v. *United States*, 491 U.S. at 623-624 n.3.

2. The Court of Appeals' decision in this case squarely conflicts with this Court's precedents. The panel below found that PPS "itself has not suffered direct injury," App. 15a—a fact "[n]o one disputes." *Id.* 25a (Nygaard, J., dissenting). That should have been the end of the matter. For under this Court's precedents, as Judge Nygaard recognized in dissent, "because PPS has not even alleged a concrete injury to itself, it cannot satisfy [the] most elementary standard" for Article III's case-or-controversy requirement. *Id.*; *see id.* ("Standing should be denied to PPS on this test alone."). Yet the divided panel ignored this basic constitutional constraint on federal court jurisdiction, announcing an unprecedented rule allowing "associations [to] advance the third-party claims of their members without suffering injuries themselves." *Id.* 21a.

The Court of Appeals justified its marked deviation from settled precedent by fashioning a doctrine it dubbed "derivative standing," *id.* 19a, 20a—an amalgam of two distinct exceptions to traditional standing doctrine cobbled together to form a third more tenuous exception. The first step in the Court's analysis was its conclusion that PPS's *member-psychiatrists* had alleged injury-in-fact and that PPS therefore had associational standing to press *its members'* claims under *Hunt* v. *Washington State Apple Advertising Commission.*

App. 12a; *id.* 15a ("Although the Pennsylvania Psychiatric Society itself has not suffered direct injury, it is uncontested that it properly pleaded that defendants' policies and procedures have economically injured its member psychiatrists and undermined their ability to provide quality health care."). The court's second step was to speculate that PPS's member-psychiatrists would have third-party standing to advance their patients' claims—a purely hypothetical inquiry, since none of the members is a party to the suit and the complaint alleges no third-party claim on behalf of patients brought by their psychiatrists. *Id.* 15a ("while the Society does not itself stand in an appropriate relationship to the patients' claims to directly assert them, its members may have third-party standing to do so"). Applying both the constitutional and prudential tests for third-party standing, the court below concluded that PPS's members—had they brought suit on their patients' behalf—would have had third-party standing because the psychiatrists had alleged direct injury to themselves, *id.* 15a, they "clearly have the kind of relationship with their patients which lends itself to advancing claims on their behalf," *id.* 16a, and their patients "face obstacles to pursuing litigation themselves." *Id.*

Whatever may be said for the court's first two steps, they formed the springboard for yet another athletic leap in logic wholly without precedent. From those two premises, the court reasoned that "when an association, which has not sustained direct injury, obtains standing to pursue the claims of its members, the association may rely on the injuries sustained by its members to satisfy the injury-in-fact requirement" for raising third-party claims. *Id.* 21a. In other words: "So long as the association's members have or will suffer sufficient injury to merit standing and their members possess standing to represent the interests of third-parties, then associations can advance the third-party claims of their members without suffering injuries themselves." *Id.* By thus employing such transitive analysis and making "the members

* * * the appropriate focus of inquiry," *id.* 15a, the court below extended third-party standing to PPS without demanding a showing of independent injury to the association itself.

3. The Third Circuit's belief that "these exceptions can be 'stacked' to concoct a new exception to the standing rule," App. 24a (Nygaard, J., dissenting), reflects a fundamental misunderstanding of this Court's precedents—as they relate to the doctrines of both associational and third-party standing.

To begin with, the Third Circuit's rule that an association with standing to press its *members'* claims satisfies the injury-in-fact requirement to bring suit on behalf of its *members' patients* conflicts with *Hunt* v. *Washington State Apple Advertising Commission*, 432 U.S. at 342-344. There, this Court held that an association that does not itself suffer injury-in-fact may nevertheless "bring suit on behalf of its members when * * * its members would otherwise have standing to sue *in their own right*." *Id.* at 343 (emphasis added). Whatever might be said about whether PPS has associational standing to bring suit on behalf of its members, *Hunt* clearly forecloses PPS from bringing suit on behalf of its *members' patients* for injuries the patients—not the members—suffered. That is because regardless of whether psychiatrists have third-party standing to bring suit on behalf of their patients, such claims would be just that: for the benefit of their patients, not "in [the members'] own right." *Id.* *See Simon* v. *Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 40 (1976) (an association "can establish standing only as representatives of those of their members who have been injured in fact, and thus could have brought suit in their own right").

This limitation makes eminent sense in light of the basic role of standing doctrine in ensuring that a plaintiff has a concrete interest in the claim before the court. An association suing on behalf of its members under *Hunt* is already

bringing a third-party claim—the members themselves are not parties to the litigation, only the association is—yet it is the members' claims that will be adjudicated by the court. Allowing an association to assert claims its members might bring on behalf of *other* third parties would be conferring on the association third-party standing twice-removed. Such attenuation of the basic standing requirement that the plaintiff have a "personal stake in the outcome of the litigation" has never been sanctioned by this Court. *Bender* v. *Williamsport Area Sch. Dist.*, 475 U.S. 534, 543-544 (1986). *See Simon* v. *Eastern Ky. Welfare Rights Org.*, 426 U.S. at 39 ("The necessity that the plaintiff who seeks to invoke the judicial power stand to profit in some personal interest remains an Art. III requirement.").

That associational standing is not an undifferentiated license for an organization to bring *any* claim that its members might otherwise raise—as the court below thought—is confirmed by *Hunt*'s further requirement that "the interests [the organization] seeks to protect are germane to the organization's purpose." *Hunt* v. *Washington State Apple Adver. Comm'n*, 432 U.S. at 343. *See United Food & Commercial Workers Union Local 751* v. *Brown Group, Inc.*, 517 U.S. 544, 555-556 (1996) (*Hunt*'s second requirement is "complementary to the first, for it[] * * * raises an assurance that the association's litigators will themselves have a stake in the resolution of the dispute, and thus be in a position to serve as the defendant's natural adversary"). It is one thing to say that a lawsuit brought on behalf of licensed psychiatrists will protect interests that are germane to a professional association founded entirely to promote the interests of those licensed psychiatrists. But it is quite another to say that a lawsuit aimed at expanding the rights of *patients* under managed-care plans is an inherent interest of an organization whose membership is closed to that very constituency. Indeed, there is good reason to believe that a professional association of psychiatrists intent on increasing its members'

compensation may actually be working at cross-purposes to the interests of its members' patients, since greater rates of reimbursement will invariably lead to greater premiums—making health care more expensive for individuals and employers alike, and in some cases, prohibitively so. It is precisely that danger that informs "the understanding," so central to the presumption against third-party standing, "that the third-party rightholder may not, in fact, wish to assert the claim in question." *Miller* v. *Albright*, 523 U.S. at 446 (O'Connor, J., concurring in the judgment). *See Singleton* v. *Wulff*, 428 U.S. 106, 113-114 (1976) ("the courts should not adjudicate [third-party] rights unnecessarily [because] it may be that in fact the holders of those rights either do not wish to assert them, or will be able to enjoy them regardless of whether the in-court litigant is successful or not").

The decision of the Third Circuit thus makes an unwarranted departure from this Court's associational-standing jurisprudence. And in doing so, it embraces a rule that erroneously makes an association's *members* "the appropriate focus of inquiry," App. 15a, for evaluating whether the *association*, in bringing suit on behalf of third-parties, has "suffered some injury-in-fact, adequate to satisfy Article III's case-or-controversy requirement." *Caplin & Drysdale, Chtd.* v. *United States*, 491 U.S. at 623-624 n.3. That runs directly counter to this Court's teachings in *Hunt*, *Powers*, and other cases. *See, e.g.*, *Secretary of State of Md.* v. *Joseph H. Munson Co.*, 467 U.S. 947, 955-956 (1984); *Singleton* v. *Wulff*, 428 U.S. at 113-116.

4. The Third Circuit's misguided belief that an association's members are the "appropriate focus of inquiry" for third-party claims brought by the association not surprisingly drew it into direct conflict with this Court's precedents regarding not just the constitutional but also the prudential limits on third-party standing. In particular, this Court has held that a litigant raising another's claims must have a "close relation" to the party whose rights it asserts. *Powers*

v. *Ohio*, 499 U.S. at 411. That means that the litigant and the rightholder must have established an actual relationship that demonstrates a "congruence of interests" with respect to the matters being litigated, thus "mak[ing] it necessary and appropriate for the [litigant] to raise the rights of the" third party and ensuring that the proxy suit will result in " 'little loss in terms of effective advocacy.' " *Id.* at 413-414 (quoting *Craig* v. *Boren*, 429 U.S. 190, 194 (1976)). *See, e.g.*, *Department of Labor* v. *Triplett*, 494 U.S. 715, 720-721 (1990) (lawyer and client); *Caplin & Drysdale, Chtd.* v. *United States*, 491 U.S. at 623-624 & n.3 (lawyer and client); *Craig* v. *Boren*, 429 U.S. at 195 (vendor and customer); *Singleton* v. *Wulff*, 428 U.S. at 114-117 (doctor and patient); *Eisenstadt* v. *Baird*, 405 U.S. 438, 445 (1972) (doctor and patient).

No such relationship remotely exists between a professional association and the patients of its member-psychiatrists. *See* App. 25a (Nygaard, J., dissenting) ("The relationship between PPS and the patients is nothing like the doctor/patient intimacy that supports that exception to the standing rule."). The Third Circuit did not suggest otherwise. Instead, it erroneously considered whether the organization's members—who, it bears repeating, are *not* litigants in this suit—had the necessary close relationship with the third-party patients. As we have explained, that focus cannot be reconciled with this Court's relevant precedents.

5. Finally, by embracing a rule that dramatically expands the scope of the third-party standing doctrine, the decision of the court below squarely conflicts with those of this Court that "ha[ve] long applied a presumption against third-party standing." *Miller* v. *Albright*, 523 U.S. at 445 (O'Connor, J., concurring in the judgment). *See Warth* v. *Seldin*, 422 U.S. at 499. As this Court has emphasized, the normal rule is that "a litigant *must* assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties." *Powers*, 499 U.S. at

410 (emphasis added). It is a rule that operates as a "fundamental restriction" on the power of the federal judiciary and the exceptions to it are both "certain" and "limited." *Id.*

The Third Circuit's "derivative standing" exception is neither certain nor limited. It is instead an expansive "hybrid," App. 24a (Nygaard, J., dissenting)—forged from the alloy of two already *limited* exceptions to the standing doctrine—that boasts neither doctrinal certainty nor any principled limitation. As Judge Nygaard put it in dissent, an association simply "cannot piggy-back two discrete *exceptions*, to swallow up the long-standing *rule* that litigants must assert their own rights and interests." *Id.* 21a. Certiorari is warranted to resolve the numerous conflicts between the Third Circuit's decision and those of this Court.

II. THE QUESTION PRESENTED CONCERNS AN IMPORTANT AND RECURRING ISSUE OF SEPARATION OF POWERS THAT SHOULD BE DECIDED BY THIS COURT.

The conflicts presented by this petition provide a compelling basis for plenary review, but the need for certiorari is heightened still further by the importance of the question presented. By granting organizations standing to sue on behalf of third parties without demonstrating any independent injury-in-fact, the decision below threatens " 'the proper—and properly limited—role of the courts in a democratic society.' " *Bennett* v. *Spear*, 520 U.S. 154, 162 (1997) (quoting *Warth* v. *Seldin*, 422 U.S. at 498). As this case demonstrates, under the Third Circuit's "derivative standing" doctrine, organizations suffering no injury and purporting to act on behalf of distant third parties will be able to commandeer the federal judiciary into resolving weighty, abstract issues of social policy best left—and until the decision below, traditionally left—to legislative determination. Such a promiscuous extension of the third-party standing doctrine will invariably "carr[y] the courts beyond the bounds of

authorized judicial action and thus offend[] fundamental principles of separation of powers." *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. at 94.

1. Article III's "Case" or "Controversy" mandate "is not merely a troublesome hurdle to be overcome if possible so as to reach the 'merits' of a lawsuit which a party desires to be adjudicated; it is a part of the basic charter promulgated by the Framers of the Constitution at Philadelphia in 1787." *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. at 476. *See also Mansfield, C. & L.M.R. Ry.* v. *Swan*, 111 U.S. 379, 382 (1884) (restrictions on federal court jurisdiction "spring[] from the nature and limits of the judicial power of the United States"). Indeed, " '[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.' " *Raines* v. *Byrd*, 521 U.S. 811, 818 (1997) (quoting *Simon* v. *Eastern Ky. Welfare Rights Org.*, 426 U.S. at 27). *See Flast* v. *Cohen*, 392 U.S. 83, 96 (1968). The standing doctrine thus operates as a guidepost, "setting apart the 'Cases' and 'Controversies' that are of the justiciable sort referred to in Article III—'serv[ing] to identify those disputes which are appropriately resolved through the judicial process.' " *Lujan* v. *Defenders of Wild-life*, 504 U.S. at 560 (quoting *Whitmore* v. *Arkansas*, 495 U.S. 149, 155 (1990)).

This Court's precedents make clear that "[t]he law of Art. III standing is built on a single basic idea—the idea of separation of powers." *Allen* v. *Wright*, 468 U.S. at 752; *accord Raines* v. *Byrd*, 521 U.S. at 820. *See also* Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk L. Rev. 881 (1983). By conditioning judicial relief upon a showing of concrete injury and proof that the litigant " 'personally would benefit in a tangible way from the court's intervention,' " *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. at 103 n.5 (quoting

Warth v. *Seldin*, 422 U.S. at 508), the standing doctrine "prevent[s] courts from undertaking tasks assigned to the political branches." *Lewis* v. *Casey*, 518 U.S. 343, 357 (1996). That gatekeeping function is crucial, for "the Constitution's central mechanism of separation of powers depends largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts." *Lujan* v. *Defenders of Wildlife*, 504 U.S. at 559-560. *See also Freytag* v. *Commissioner*, 501 U.S. 868, 870 (1991) ("The leading Framers of our Constitution viewed the principle of separation of powers as the central guarantee of a just government."); *Myers* v. *United States*, 272 U.S. 52, 293 (1926) (Brandeis, J., dissenting) ("The doctrine of the separation of powers was adopted by the Convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power.").

2. Because of this "overriding and time-honored concern" for the properly limited role of the federal judiciary, *Raines* v. *Byrd*, 521 U.S. at 820, it is essential that courts not be called upon "to decide abstract questions of wide public significance"—particularly when "other governmental institutions may be more competent to address [those] questions." *Warth* v. *Seldin*, 422 U.S. at 500. Yet that is precisely what the Third Circuit's rule ensures. In this case, for example, an organization with a purely rooting interest has been granted standing to seek—in its own words—"broad-based changes" to the fundamental way in which psychiatric managed care is delivered. App. 36a. But the separation-of-powers concerns that the standing doctrine jealously protects would be weakened considerably were the judicial process converted into "no more than a vehicle for the vindication of the value interests of concerned bystanders." *United States* v. *SCRAP*, 412 U.S. 669, 687 (1973). *Cf. Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U.S. 208, 225 (1974) ("We have no doubt about the sincerity of respondents' stated objectives and the depth of their com-

mitment to them. But the essence of standing is not a question of motivation but of possession of the requisite * * * interest that is, or is threatened to be, injured * * *.") (quotation omitted). And given the fact that "[o]ver the past several years the judiciary has become a major venue for challenging managed care," Vicki Lens, *Managed Care and the Judicial System: Another Avenue for Reform?*, 27 Health & Soc. Work 27, 27 (Feb. 2002), the expansive third-party standing rule adopted by the court below poses a very real threat to those fundamental separation-of-powers concerns. *See United States* v. *Richardson*, 418 U.S. 166, 188 (1974) (Powell, J., concurring) ("Relaxation of standing requirements is directly related to the expansion of judicial power.").

Indeed, certiorari is particularly warranted, because decisions regarding whether and to what extent there should be "broad-based changes" to managed care are peculiarly within the bailiwick of the legislature. In *Pegram* v. *Hedrich*, 530 U.S. 211 (2000), this Court addressed a similarly comprehensive assault on the way in which managed-care organizations structure their services and incentives. Such claims, this Court observed, turned on "judgment[s] about socially acceptable medical risk," which "would * * * necessarily turn on facts to which courts would probably not have ready access." *Id.* at 221. That fact led this Court to emphasize that "a debatable social judgment [is] not wisely required of courts unless for some reason resort cannot be had to the legislative process," with its "preferable forum for comprehensive investigations and judgments of social value, such as optimum treatment levels and health-care expenditures." *Id.*

Nor is there any question that resort may be had to the legislative process. In the 106th Congress, for example, the House of Representative and the Senate each passed a version of legislation—popularly known as the "Patients Bill of Rights"—that would have enacted far-reaching reforms to the managed-care industry. *See* S. 1344, 106th Cong. (1999);

H.R. 2990, 106th Cong. (1999). And in the current Congress, two bills have been introduced that would again mandate comprehensive changes to the structure and delivery of managed care. *See* S. 889, 107th Cong. (2001); S. 283, 107th Cong. (2001). Both bills would do precisely what PPS purports to do on behalf of its members' patients: "protect consumers in managed care plans and in other health coverage." S. 889, 107th Cong., pmbl; *accord* S. 283, 107th Cong., pmbl.

The Third Circuit's dubious doctrine of "derivate standing" thus threatens to transfer from the legislative branch to the judiciary the sorts of "debatable social judgment[s]" that the courts are particularly ill-suited to make. *Pegram* v. *Hedrich*, 530 U.S. at 221. Such a result will benefit neither the judicial nor legislative branches of government, and the "public confidence essential to the former and the vitality critical to the latter" will invariably suffer. *United States* v. *Richardson*, 418 U.S. at 188.

3. PPS is not the first—and it certainly will not be the last—organization to bring suit on behalf of third parties without suffering any direct injury to itself. *See Fraternal Order of Police* v. *United States*, 152 F.3d 998, 1002 (D.C. Cir. 1998), *cert. denied*, 528 U.S. 928 (1999); *Ohio Ass'n of Ind. Schs.* v. *Goff*, 92 F.3d 419, 422 (6th Cir. 1996), *cert. denied*, 520 U.S. 1104 (1997); *Public Citizen* v. *Federal Trade Comm'n*, 869 F.2d 1541, 1550 (D.C. Cir. 1989). Although more cursory than the Third Circuit's analysis, decisions from the other courts of appeals addressing the same issue have likewise assumed that the ability of an organization's members to sue on behalf of third parties necessarily vests the organization with third-party standing over those same claims. In *Fraternal Order of Police*, the court ruled that an association of Chief Law Enforcement Officers ("CLEOs") could bring suit on behalf of non-member police officers. Like the Third Circuit below, the D.C. Circuit misconstrued this Court's precedents, conclud-

ing—without any significant analysis—that because the CLEOs would have third-party standing to assert the rights of their fellow officers, the organization necessarily would have "standing to make[] these claims as well." 152 F.3d at 1002. Based on the same rationale, the D.C. Circuit had earlier ruled that a consumer-advocacy group could press claims on behalf of its member-parents' children even though the organization itself had suffered no injury-in-fact. *Public Citizen*, 869 F.2d at 1550. Likewise, the Sixth Circuit ruled in *Goff* that "an organization dedicated exclusively to advancing the interests of [its] member schools" would have standing to litigate on behalf of not only its member schools but would "also have standing to assert the constitutional right of parents to direct their children's education." 92 F.3d at 422.

These decisions underscore the recurring nature of the question presented in the petition. And the perfunctory analysis each employs in concluding that associations need not suffer injury-in-fact to raise the rights of non-member third parties demonstrates the compelling need for this Court to clarify the proper bounds of associational and third-party standing. This Court should therefore grant certiorari and reverse the judgment below to make clear that injury-in-fact remains an essential constitutional requirement applicable to every litigant attempting to invoke the jurisdiction of the federal courts.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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